

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1356

To be argued by  
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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:  
UNITED STATES OF AMERICA, :  
:  
Plaintiff-Appellee, :  
:  
-against- :  
:  
MARIO CAICEDO, :  
:  
Defendant-Appellant. :  
:  
-----X

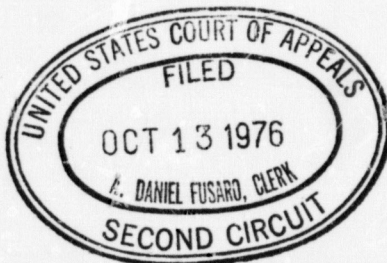
*B*  
*P/S*  
Docket No. 76-1356

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## APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



SHEILA GINSBERG,  
Of Counsel.

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
MARIO CAICEDO  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

PAGINATION AS IN ORIGINAL COPY



TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: MARCUS
VS.	
MARIO CAICEDO	
	For Defendant:
Did possess & did distribute cocaine	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		5/7/76	Notice of Appeal	5 -	
Clerk,		5/10/76	paid to Treas	-	5 -
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
9-30-75	Before Platt, J - Indictment filed
10-6-75	Before COSTANTINO J - case called - deft not present - addid to Oct. 9, 1975 for pleading.
10/7/75	Notice of Readiness for Trial filed
10/9/75	Before COSTANTINO, J.- Case called- Deft and counsel present- deft arraigne and enters a plea of not guilty-case set down for trial on 12/3/75 at 10:00 A.M.- all motions by 11/7/75- case set down for bail hearing on 10/14/75
10-10-75	Notice of Readiness for trial filed
10/14/75	Before COSTANTINO, J.- Case called- Deft and counsel present-bail reduced to \$5,000.00 surety bond
10-15-75	By COSTANTINO J - Order filed that the bail posted in behalf of the deft be exonerated and that Public Service Mutual Insurance Co. return the Louis Elks, the sum of \$10,000.00.

# 75 CR 728

DATE	PROCEEDINGS
0/16/75	By COSTANTINO, J.- Copy of Order filed that bail of deft is reduced to \$5,000.00- and that P.S.M. Insurance Co. return to Louis Elks and so reduce the sum to \$5,000.00
12-3-75	Before COSTANTINO J - case called - adjd to Jan. 12, 1976 for trial Deft & atty Philip Brown present.
1-12-76	Before COSTANTINO J - case called - deft & counsel P. Brown present - trial ordered and begun - Jurors selected and sworn - trial adjourned without date.
1-15-76	Before COSTANTINO J - case called - deft & atty present - Interpreter M. Mensa sworn - trial resumed - Govt rests - defts to dismiss both counts denied - trial contd to Jan. 16, 1976 at 10:30 am
1-16-76	Before COSTANTINO J - case called - deft & atty present - Interpreter M. Cardenas sworn - trial resumed - deft rests and renews motion to dismiss the indictment - motion denied - Govt sums up - deft sums up - Judge charges jury at 4:00 PM - alternates discharged - marshals sworn - jury retires at 4:45 P <sub>m</sub> - jury returns at 8:45 Pm with a verdict of guilty on counts 1 and 2 - sentence adjd without date - defts motion to set aside verdict is denied.
1-16-76	By COSTANTINO J - 2 orders of sustenance filed
2-5-76	75 M 1860 inserted in CR file
3/12/76	Before COSTANTINO, J.- case adjd to 3/19/76 for sentence
3/19/76	Before COSTANTINO, J.- Case called- deft and counsel <sup>not</sup> present- case adjd to 4/1/76 for sentence
3-19-76	Letter of March 19, 1976 filed received from Chambers re deft from Kings County Hospital that deft underwent emergency appendectomy
4/1/76	Before COSTANTINO, J.- Case called- deft and counsel not present <sup>not</sup> bench warrant ordered and stayed to 4/5/76 at 10:00 A.M.
4-5-76	Before COSTANTINO J - case called - deft & counsel <sup>NOT</sup> present - case adjd to 4-12-76 - Bench Warrant stayed to 4-12-76/
4-12-76	Before COSTANTINO J - case called - deft not present - atty Philip Brown present - Bench Warrant ordered and stayed until 4-14-76 at 11:00 a
4/14/76	Before COSTANTINO, J.- Case called- deft and counsel present- sentence adjd to 4/30/76 at 11:00 A.M.
5-7-76	Before COSTANTINO J - case called - deft & counsel P. Brown present - deft sentenced for 4 years imprisonment on each of counts 1 and 2 to run concurrently and special parole term of 5 years. Clerk to prepare Notice of appeal.
5-7-76	Judgment & Commitment filed - certified copies to Marshal



## CRIMINAL DOCKET

DATE	PROCEEDINGS
5-7-76	Notice of Appeal filed.
5-7-76	Docket entries and duplicate of Notice of Appeal mailed to the C of A
5-13-76	Judgment & commitment ret'd and filed - deft. del. to MCC, NY
6-22-76	Rule 35 motion filed for reduction of sentence imposed.
6-25-76	Order received from the court of appeals that the record be docketed on or before July 9, 1976.
6-28-76	Judgment & commitment ret'd and filed - deft delivered to F.C.I. Sandstone, Minn.
6-29-76	By COSTANTINO J - Order filed denying motion pursuant to R.35.
8-16-76	Order received from the court of appeals that the record on appeal be indexed on or about Sept. 13, 1976.
9-13-76	7 transcripts filed (one dated Jan. 16, 1976; one dated 1-12-76; one dated 3-19-76; one dated 4-1-76; one dated 4-5-76; one dated 5-12-76; one dated 4-14-76 and one dated 5-7-76)
9/13/76	Stenographers transcripts dated 12/3/75, 10/14/75, 10/9/75, & <del>XXXXXX</del> filed

9/13 76

*[Handwritten signature]*

*[Circular stamp]*

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UNITED STATES OF AMERICA

-against-

MARIO CAICEDO,

Defendant.

-----  
THE GRAND JURY CHARGES:

I N D I C T M E N T

Cr. No. ....

T. 21, U.S.C., §841(a)(1)

**FILED**

IN CLERK'S OFFICE

U. S. DISTRICT COURT E.D. N.Y.

SEP 30 1975

TIME A.M. ....

P.M. ....

COUNT ONE

On or about the 30th day of April, 1974, within the Eastern District of New York, the defendant MARIO CAICEDO knowingly and intentionally did possess with intent to distribute approximately one eighth (1/8) kilogram of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

COUNT TWO

On or about the 30th day of April, 1974, within the Eastern District of New York, the defendant MARIO CAICEDO knowingly and intentionally did distribute approximately one eighth (1/8) kilogram of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (TITLE 21, United States Code, Section 841(a)(1)).

A TRUE BILL

*David G. Trager*  
by *ED Korman*  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

*Richard B. Greiner*  
FOREMAN



(Whereupon, sidebar conference was concluded.)

THE COURT: Madam Forelady and Ladies and  
Gentlemen of the jury.

Now that you have heard the evidence and the  
arguments, it becomes my duty to give you the instruc-  
tions of the Court as to the law applicable to this  
case.

It is your duty as jurors to follow the law as  
stated in the instructions of the Court and to apply  
the rules of law so given to the facts as you find  
them from the evidence of the case.

You are not to single out one instruction alone  
as stating the law, but must consider the instructions  
as a whole.

And neither are you to be concerned with the  
wisdom of any rule of law stated by the Court. Regard-  
less of any opinion you may have as to what the law  
ought to be, it would be a violation of your sworn  
duty to base a verdict upon any other view of the law  
than that given in the instructions of the Court; just  
as it would be a violation of your sworn duty, as  
judges of the facts, to base a verdict upon anything  
but the evidence in the case.

Justice through trial by jury must always  
depend upon the willingness of each individual juror

1 to seek the truth as to the facts from the same  
2 evidence presented to all the jurors; and to arrive  
3 at a verdict by applying the same rules of law, as  
4 given in the instructions of the Court.

5 You have been chosen and sworn as jurors in  
6 this case to try the issues of fact presented by the  
7 allegation of the indictment and the denial made by  
8 the not guilty plea of the accused. You are to per-  
9 form this duty without bias or prejudice as to any  
10 party. The law does not permit jurors to be governed  
11 by sympathy, prejudice or bias. Both the accused and  
12 the public expect that you will carefully and impar-  
13 tially consider all the evidence in the case, follow  
14 the law as stated by the Court and reach a just ver-  
15 dict, regardless of the consequences.

16 The attorneys have been permitted by the Court  
17 and by the rules to make opening statements and  
18 summations to you. Under no circumstances are the  
19 statements they have made by way of opening or by way  
20 of summation to be taken as evidence. However, the  
21 Court and the law does permit you to take the arguments  
22 that they have proffered before you and weigh those  
23 arguments. And if you agree with what they have said  
24 on either side of the case you may use those arguments  
25 in your deliberations and in discussion of the case



1 with each other, and try to convince one another as  
2 to what the final determination shall be with ref-  
3 erence to the deliberations at hand.

4 If you feel that the arguments are not commen-  
5 surate with the testimony and the proof in the case,  
6 you may disregard them. The arguments are not evi-  
7 dence. You need not weigh them. However, there are  
8 times when the arguments of the attorneys will give  
9 you an insight as to something you may have missed,  
10 and you may discuss that portion of it if you so  
11 desire.

12 As I have already instructed you, the Court  
13 will be the judge of the law. You may recall that  
14 some motions were argued at side bar or that you were  
15 asked to leave the Courtroom from time to time. That  
16 was not for the purpose of keeping any of the proof  
17 from you, but were matters of law that were discussed  
18 between the attorneys and the Court itself and should  
19 not have come before you. In any event, if you feel  
20 that you have discovered by some stretch of your  
21 imagination what this Court thinks as to either some  
22 of the testimony or the case itself, you should remove  
23 that from your mind.

24 I have neither indicated to you in any way what-  
25 soever what my feeling is with reference to the facts

1 in the case or with reference to the guilt or innocence  
2 of the defendants. That is your province and your  
3 job. You should not try to weigh what you believe the  
4 Court's impression may be.

5 You must understand that the lawyers who appear  
6 before you are advocates. They are advocating the  
7 best case they can for the parties they represent and  
8 they have a right to exercise as much as forcefulness  
9 as they desire in their questioning and otherwise in  
10 presenting their case.

11 During my precharge I told you among other  
12 things that the questions asked by the attorneys are  
13 never to be considered as evidence even though the  
14 question may contain a statement of evidence. You  
15 are reminded that only the answer to the question is  
16 evidence, if, of course, the question was answered.

17 Of course you know by now that this case has  
18 come before you by way of indictment presented by a  
19 Grand Jury sitting in the Eastern District. I shall  
20 now read the indictment to you. Remember, an indict-  
21 ment is merely an accusation, merely a piece of paper,  
22 it is not evidence and is not proof of anything.

23 Count one, on or about the 30th day of April  
24 1974, within the Eastern District of New York, the  
25 defendant Mario Caicedo knowingly and intentionally



1 did possess with intent to distribute approximately  
2 one eighthkilogram of cocaine hydrochloride, a schedule  
3 two narcotic drug controlled substance, Title 21  
4 United States Code of Section 841(a) (1).

5 Count two.

6 On or about the 30th day of April, 1974, within  
7 the Eastern District of New York, the defendant Mario  
8 Caicedo knowingly and intentionally did distribute  
9 approximately one eighth kilogram of cocaine hydro-  
10 chloride, a scheudle two narcotic drug controlled  
11 substance in violation of Title 21 United States Code  
12 of Section 841(a) (1).

13 Section 841(a) (1) of Title 21 of the United  
14 States Code provides in pertinent part:

15 It shall be unlawful for any person knowingly  
16 or intentionally

17 (1) To distribute or dispense or possess with  
18 intent to distribute, or dispense a controlled substance.

19 The essential elements of the first count of  
20 the indictment, all of which the Government must prove  
21 beyond a reasonable doubt for you to convict the  
22 defendant on this count are as follows:

23 FIRST: That the defendant possess a quantity  
24 of approximately one eighth of a kilogram of cocaine  
25 hydrochloride;

1 SECOND: That the defendant possess the cocaine  
2 with intent to distribute it;

3 THIRD: That he understood that the substance  
4 he possessed was cocaine or some other illegal drugs;  
5 and

6 FOURTH: That he understood that he was acting  
7 illegally.

8 If the Government fails to prove any one or  
9 more of these essential elements beyond a reasonable  
10 doubt, you must acquit the defendant.

11 The charges in this indictment require the  
12 Government to prove that the defendant knowingly and  
13 willfully performed acts in violation of law. The  
14 Court will therefore define the words knowingly and  
15 willfully.

16 And act is done "Knowingly" is done voluntarily  
17 and intentionally, and not because of mistake or  
18 accident or other innocent reason.

19 The purpose of adding the word "Knowingly" was  
20 to ensure that no one would be convicted for an act  
21 done because of mistake, accident or other innocent  
22 reason.

23 An act is done "Willfully" if done voluntarily  
24 and intentionally, and with specific intent to do  
25 something the law forbids; that is to say, with bad



purpose either to disobey or to disregard the law.

The law recognizes two kinds of possession, actual and constructive possession. A person who knowingly has direct physical control over a thing at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

You may find that the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

You may find that the cocaine mentioned in the indictment was in the defendant's possession if you find beyond a reasonable doubt that the defendant knowingly had it in his power or under his control.

The term "Distribute" means to deliver a controlled substance to the possession of another person, which in turn means the actual, constructive, or attempt to transfer of a controlled substance.

The essential elements of count two of the indictment, all of which the Government must prove

beyond a reasonable doubt or else you must acquite the defendant are as follows:

FIRST: That the defendant distributed a quantity of approximately one eighth of a kilogram of cocaine hydrochloride;

SECOND: That he understood that the substance he distributed was cocaine hydrochloride or some other illegal drug; and

THIRD: That he understood that he was acting illegally.

There are two types of evidence from which you may find the truth as to the facts of a case, direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye witness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.



1 A defendant is presumed innocent of the crime.  
2 Thus, the defendant, although accused, begins the trial  
3 with a clean slate and with no evidence against him,  
4 and the law permits nothing but legal evidence to be  
5 presented before a jury to be considered in support of  
6 any charge against the accused. So the presumption of  
7 innocent alone is sufficient to acquit a defendant  
8 unless you, the jury, are satisfied beyond a reasonable  
9 doubt of the defendant's guilt after careful and im-  
10 partial consideration of all the evidence in the case.

11 It is not required that the Government prove  
12 guilt beyond all possible doubt. The test is one of  
13 reasonable doubt, and reasonable doubt is doubt based  
14 upon reason and common sense, the kind of doubt that  
15 would make a reasonable person hesitate to act. Proof  
16 beyond a reasonable doubt, must, therefore be proof  
17 of such a convicting character that you would be will-  
18 ing to rely and act upon it unhesitatingly in the  
19 most important of your own affairs.

20 You, the jury, will remember that a defendant  
21 is never to be convicted on their suspicion or con-  
22 jecture. The burden is always upon the prosecution  
23 to prove guilt beyond a reasonable doubt. This burden  
24 never shifts to a defendant. The law never imposes  
25 upon a defendant in a criminal case the burden or

1 duty of calling any witnesses or producing any evidence.  
2 If the jury views the evidence in the case as reason-  
3 ably permitting either of two conclusions, one of  
4 innocence, the other of guilt, you, the jury, must,  
5 of course, adopt the conclusion of innocent.

6 A reasonable doubt may arise not only from the  
7 evidence produced, but also from a lack of evidence.  
8 Since the burden is upon the prosecution to prove the  
9 accused guilty beyond a reasonable doubt of every  
10 essential element of the crime charged a defendant has  
11 the right to rely upon failure of the prosecution to  
12 establish such proof.

13 I have said that the defendant may be proven  
14 guilty either by direct or circumstantial evidence.  
15 I have said that direct evidence is the testimony of  
16 one who asserts actual knowledge of a fact, such as  
17 an eye witness. Also circumstantial evidence is  
18 proof of a chain of facts and circumstances indicating  
19 the guilt or innocence of a defendant. You, the jury  
20 may make comments and inferences from the proven facts.

21 It is not necessary that all inferences drawn  
22 from the facts in evidence be consistent only with  
23 guilt and inconsistent with every reasonable hypoth-  
24 eses of innocent. The test is one of reasonable doubt,  
25 and should be based upon all the evidence, the testimony



1 of the witnesses, the documents offered into evidence  
2 and the reasonable inferences which can be drawn from  
3 the proven facts.

4 An inference is a deduction or conclusion which  
5 reason and common sense lead the jury to draw from the  
6 facts which have been proved. You are to consider  
7 only the evidence in the case. But in your considera-  
8 tion of the evidence you are not limited to the bald  
9 statements of the witnesses. On the contrary, you are  
10 permitted to draw, from the facts which you find have  
11 been proved, such reasonable inferences as seem justi-  
12 fied in the light of your own experience.

13 Where the genuineness of handwriting is in  
14 issue any proof or admitting handwriting of a person  
15 may be received in evidence to be used as specimen for  
16 comparison for the handwriting in dispute. Expert  
17 witnesses claim special qualifications of handwriting  
18 have testified to certain handwriting in dispute. A  
19 handwritin, expert may state his opinion as to whether  
20 documents or signatures were written by the same  
21 person and whether they are genuine, disguise or  
22 altered by comparing the handwriting in dispute with  
23 a proven specimen. You have the right to determine  
24 the weight to be given such expert testimony. The  
25 rules of evidence ordinarily do not permit witnesses

1 to testify as to opinion and conclusions, exception  
2 to this rule exist to those called as expert witnesses.  
3 A witness who by education and experience has become  
4 expert in some hard science, profession or calling  
5 may state an opinion as to relevant and material  
6 matter in which they profess to be expert and may also  
7 state their reasons for the opinion. You should  
8 consider each expert and we had one expert here, the  
9 chemist, his report was received in evidence in this  
10 case and give it such weight as you think it deserves.  
11 If you decide the opinion of the expert witness is  
12 not based on sufficient education, experience, or if  
13 you conclude the reasons given in support of your  
14 opinion, or if your opinion's outweighed by other  
15 evidence, you may disregard the opinion entirely.

16 Evidence has been introduced which may tend  
17 to establish an alibi. An alibi is a contention that  
18 the defendant was not present at the time when, or  
19 at the place where he's alleged to have committed the  
20 offense charged in the indictment. Specifically,  
21 defendant's witness testified that she had seen the  
22 defendant embark on an airplane flight prior to the  
23 date of the alleged offense and she had not seen the  
24 defendant again until after the date of the alleged  
25 offense. On the other hand the Government has



1 presented witnesses who testified that they had seen  
2 the defendant on April 30, 1974 in Brooklyn, New York  
3 on the date of the alleged offense.

4 If after consideration of all the evidence in  
5 the case you have a reasonable doubt as to whether the  
6 defendant was present at the time and place the  
7 alleged offense was committed, you must acquit him.  
8 The jury will also bear in mind the law never imposes  
9 upon a defendant in a criminal case burden or duty of  
10 calling any witness or producing any evidence. If it  
11 is within the power of the prosecution or the defense  
12 to produce a witness who could give material testimony  
13 when an issue in the case; the failure to call that  
14 witness may give rise to an inference that his testi-  
15 mony would be unfavorable to the party. However, no  
16 such conclusion can be drawn by you with regard to a  
17 witness who is equally important to both parties or  
18 where the witness's testimony would be merely cumula-  
19 tive.

20 The jury will also bear in mind that the law  
21 never imposes on a defendant in a criminal case the  
22 burden or duty of calling any witness or producing any  
23 evidence.

24 You as jurors are the sole judges of the credi-  
25 bility of the witnesses and the weight their testimony

1 deserves, and it goes without saying that you should  
2 scrutinize all the testimony given, the circumstances  
3 under which each witness has testified, and every  
4 matter in evidence which tends to show whether a  
5 witness is worthy of belief. Consider each witness's  
6 intelligence, motive and state of mind, and his de-  
7 meanor and manner while on the stand. Consider the  
8 witness's ability to observe the matters as to which  
9 he has testified, and whether he impresses you as  
10 having an accurate recollection of these matters.  
11 Consider also any relation each witness may bear to  
12 either side of the case; the manner in which each  
13 witness might be affected by the verdict; and the  
14 extent to which, if at all, each witness is either  
15 supported or contradicted by other evidence in the  
16 case.

17 Inconsistencies or discrepancies in the testi-  
18 mony of a witness or between the testimony of different  
19 witnesses, may or may not cause the jury to discredit  
20 such testimony. Two or more persons witnessing an  
21 incident or a transaction may see or hear it dif-  
22 ferently; and an innocent misrecollection, like  
23 failure of recollection, is not an uncommon experience.

24 In weighing the evidence of a discrepancy,  
25 always consider whether it pertains to a matter of



1 importance or an unimportant detail, and whether the  
2 discrepancy results from innocent error or intentional  
3 falsehood.

4 After making your own judgment, you will give  
5 the testimony of each witness such credibility, if any,  
6 as you may think it deserves.

7 Every witness's testimony must be weighed as  
8 to its truthfulness. If you find any witness lied  
9 as to any material fact in the case then the law gives  
10 you certain privileges. One of those privileges is  
11 that you have the right to disregard the entire testi-  
12 mony of that witness. If you find, however, that you  
13 can shift through that testimony and determine which  
14 of the testimony is true and which was false, then the  
15 law allows you to take the portions which were true  
16 and weigh it and disregard those portions which were  
17 false. That again is within your prerogative.

18 The weight of the evidence is not necessarily  
19 determined by the number of witnesses testifying on  
20 either side. You should consider all the facts and  
21 circumstances in evidence to determine which of the  
22 witnesses are worthy of greater credence.

23 You are not obliged to accept testimony, even  
24 though the testimony is uncontradicted and the witness  
25 is not impeached. You may decide, because of the

1 witness's bearing and demeanor, or because of the  
2 inherent improbability of his testimony, or for other  
3 reasons sufficient to you, that such testimony is not  
4 worthy of belief.

5 The Government is not required to prove the  
6 essential elements of the offense as defined in these  
7 instructions by any particular number of witnesses.  
8 The testimony of a single witness may be sufficient  
9 to convince you beyond a reasonable doubt of the  
10 existence of an essential element of the offense  
11 charged, if you believe beyond a reasonable doubt  
12 that the witness is telling the truth.

13 The law does not compel a defendant in a  
14 criminal case to take the witness stand and testify,  
15 and no presumption of guilty may be raised, and no  
16 inference of any kind may be drawn from the failure  
17 of a defendant to testify.

18 As stated before, the law never imposes upon  
19 a defendant in a criminal case the burden or duty of  
20 calling any witness or producing any evidence.

21 There is nothing particularly different in the  
22 way a jury should consider the evidence in a criminal  
23 case, from that in which all reasonable persons treat  
24 any question depending upon evidence presented to  
25 them. You are expected to use your good sense;



1 consider the evidence in the case for only those  
2 purposes for which it has been admitted, and give it  
3 a reasonable and fair construction, in the light of  
4 your common knowledge of the natural tendencies and  
5 inclinations of human beings.

6 If an accused be proved guilty beyond reasonable  
7 doubt say so. If not so proved guilty, say so.

8 Keep constantly in mind that it would be a  
9 violation of your sworn duty to base a verdict of  
10 guilty upon anything other than the evidence in the  
11 case; and remember as well that the law never imposes  
12 upon a defendant in a criminal case the burden or  
13 duty of calling any witness or producing any evidence.

14 In making the factual determination on which  
15 your verdict will be based, you may consider only the  
16 exhibits which have been admitted in evidence and the  
17 testimony of the witnesses as you have heard it in  
18 this Courtroom.

19 A separate crime or offense is charged in each  
20 of the counts of the indictment. Each charge and the  
21 evidence pertaining to it should be pertained separately.  
22 The fact that you find the accused guilty or not  
23 guilty as to one of the offenses, the charge should not  
24 control your verdict as to any other offense charged.

25 The punishment provided by law for the offense

1 is charged in the indictment is a matter exclusively  
2 within the province of the Court and should never be  
3 considered by the jury in any way in arriving at an  
4 impartial verdict as to the guilt or innocence of the  
5 accused.

6 If any reference by the Court or by counsel  
7 to matters of evidence does not coincide with your  
8 own recollection, it is your recollection which should  
9 control during your deliberation.

10 Now, in this type of case there must be a  
11 unanimous verdict, that means all twelve of you must  
12 agree, and it goes without saying that it becomes  
13 incumbent upon you to listen to one another and to  
14 argue out the points among yourselves in order to  
15 determine in good conscience whether your fellow  
16 jurors argument is one commensurate with yours or  
17 whether you can with good conscience agree with them.  
18 You have no right to stubbornly and idely sit by and  
19 say, "I am not talking to anyone," "I am not going to  
20 discuss it" because people with common sense and the  
21 ability to reason must communicate their thoughts.  
22 So, anything which appeared in the record and about  
23 which one of you may not agree, talk it out amongst  
24 yourselves and then if you can't agree as to what is  
25 in the record, well, you can ask the Court to have



1 that portion of the testimony read back to you. You  
2 may do so by knocking on the door and giving a note  
3 in writing to the Clerk who will then present it to  
4 the Court, and I will then bring you into the Court-  
5 room.

6 Madam Forelady you'll be the forelady who will  
7 preside over your deliberations and be the spokesman  
8 here in Court.

9 And now, the form of your verdict will be, if  
10 you should find the defendant not guilty as to both  
11 counts, then Madam Forelady announce the verdict being  
12 not guilty as to both counts; if you find the defen-  
13 dant guilty as to both counts, the form of your ver-  
14 dict, "We the jury find the defendant guilty as to  
15 both counts,"

16 If you should find the guilty as to one count  
17 and not guilty as to another count, announce it as to  
18 which you found him guilty and announce the count  
19 which you found him not guilty.

20 And now, the marshal will be sworn, he'll be  
21 the one in charge from here on.

22 (Whereupon, U.S. Marshal was sworn in before  
23 the Court.)

24 THE COURT: The two alternates are now dis-  
25 charged, alternate number one and alternate number two,

1 since you no longer can be part of the jury.

2 The second instruction is all the evidence  
3 that you desire will be given to you, writings or  
4 otherwise, with the exception of the cocaine, that  
5 will not be permitted in the jury room. If you wish  
6 to see what it looks like, you can come into the Court-  
7 room and it will be exhibited to you.

8 (Whereupon, jurors left the Courtroom at 4:25.)

9 MR. MARCUS: Might I suggest that we wait a  
10 little while.

11 MR. BROWN: They will be sent out at 5:15.

12 THE COURT: They will leave about 5:00 for  
13 supper.

14 Everything in evidence is going to be sent up  
15 with the exception of cocaine if they ask for it.

16 (Whereupon, the Court stood in recess.)

17 (After recess.)

18 THE COURT: The three items, the match cover,  
19 the rental form and the fingerprint card. Now, as  
20 to the agent's testimony, I'll ask them whether if  
21 any particular part of the testimony they wish to hear  
22 or whether they wish to hear all of it.

23 MR. MARCUS: The testimony runs on for a  
24 substantial number of pages.

25 MR. BROWN: Which agent?



1 THE COURT: Cordero.

2 Let me ask them. Bring them in.

3 (Whereupon, jurors reenter the Courtroom and  
4 are now seated in the jury box.)

5 THE COURT: I received a note from the jury,  
6 first request his testimony, I assume of agent  
7 Cordero; and secondly, they wish the match cover in  
8 evidence, rental forms; and fourth they wish to have  
9 the fingerprint card.

10 As to agent Cordero, you wish all his testimony  
11 or any particular part.

12 JUROR ELEVEN: All.

13 THE COURT: When you feel you have heard suf-  
14 ficient testimony the reading of the testimony will  
15 cease.

16 (Reporter commences reading testimony of Agent  
17 Cordero as requested by the jury.)

18 JUROR 10: Can we leave a message for our  
19 families?

20 THE COURT: Yes, the marshal will take your  
21 phone numbers. While you are sitting there the  
22 marshal will give you a pad.

23 THE CLERK: Jury note marked as Court Exhibit  
24 No. 1.

25 THE COURT: Now, you may take the jury out and

1 get them prepared for supper.

2 (Whereupon, jurors were excused for supper  
3 recess.)

4 (After supper.)

5 THE CLERK: Jury note marked for identification  
6 as Court Exhibit No. 2.

7 (At 8:30 P.M. jurors reenter the Courtroom and  
8 are now seated in the jury box.)



# DEPORTATION CASE CHECK SHEET

File: A- 19 457 032

ALIEN: CAICEDO-CABEZAZ, MARIO

ATTORNEY OR  
REPRESENTATIVE:

ADDRESS: 298 Columbia St. Apt 15  
Bklyn. N.Y.

Katcher  
6-28

ACTIONS TO BE COMPLETED	Completed (Date)	Initials	ACTIONS TO BE COMPLETED	Completed (Date)	Initials
L-94 Stamped	8/6/73	ms	ARRANGING TRANSPORTATION		
L-95			L-288 Notice to Transportation Line		
M-125 Docket Control Tape			L-380 Record of Billable Expense		
L-205 Warrant of Deportation			L-340 Demand for Surrender Under Bond		
L-229 Warning of Six-month Limit - 242(e)			L-166 Notice to Surrender for Deportation		
L-217 Information-Travel			G-391 Detail of Det. Off.		
L-217A Document Application			L-216 Record of Person & Property Transferred		
L-141 Medical Certificate			L-164 Document Envelope		
L-294 Notice of Dep'n Destination and Penalty for Reentry			CLOSING ACTIONS		
L-333 Bond Breach	8/6/73	ms	L-157 Notice of Deportation	8/6/73	ms
L-391 Bond Cancellation			G-189 Statistical Punch Card		
L-241 T.D. Request Country Designated by Alien			G-174 Lookout Notice Worksheet		
T.D. Request Country of Nationality			Disposition Notice - FBI	8/6/73	ms
Passport Noted - O.I. 242.10(g)	NOTE		Disposition Notice - RCMP		
DETAINED CASES			Deportation Expense Bill		
L-286 Notice of Detention or Release Conditions			L-94 Stamped and	8/6/73	ms
G-589 Property Receipt			L-95 Forwarded	8/6/73	ms
G-590 Property Envelope			"Closed" Tape Placed on File	8/6/73	ms
L-43 Statement of Detained Alien's Baggage & Personal Effects			File To Rec. Adm. Re L-151	8/6/73	ms
L-284 Notice re Detention and Deportation Expenses			Stamped "Statistical"	8/6/73	ms
L-247 Notice of Detainer			L-154 Closed	8/6/73	ms
252(b) CASES			Disposition Information furnished the following:		
L-99 Notice of Revocation and Penalty					
L-259 Notice to Detain and Deport					

Voluntary departure From NYC - to Colombia - via AV-051  
Alien (is)(is not) detained and is ready for deportation to \_\_\_\_\_ at the expense of \_\_\_\_\_

Alien's condition is: Able ☐ Mental ☐ CINS ☐ Physically Incap. ☐

(Name of SS Co. - Government)

Date

Deportation Officer

Remarks:

STOW  
USC WIFE  
I-130 to

UNITED STATES GOVERNMENT

# Memorandum

TO : Assistant Regional Commissioner  
Administrative Services, Burlington, Vt.

DATE: November 28, 1973

FROM : Maurice F. Kiley, Deputy District Director  
New York, New York

SUBJECT: Collateral Bonds Cancelled

Att: FINANCE

The following Bonds have been cancelled and the collateral may now be refunded.

STA-31	ESORDAI SINGH A20 364 202	\$ 500.00	Roy R. Prashad c/o H. Kohnatamm & Co., Inc 161 Avenue of the Americas New York, N. Y. 10013
NYC 16690	MARIO CAICEDO CABEZAZ A19 457 032	\$1000.00	Mario Caicedo Cabezas c/o Marilyn Caicedo 480 E. 23 Street Brooklyn, N. Y. 11226
NYC 18716	PABLO AREVALO QUISPE A19 499 561	\$ 500.00	Yolanda Arevala c/o Pablo Arevalo Av. Luna Pizarro 1121-406 La Victoria Lima, Peru
NYC 20146	LOUISA DIMITRIOU A19 519 826	\$1000.00	Eva Vlagos c/o Mykonos Restaurant 349 West 46 Street New York, N. Y. 10036
NYC 20773	VICTORIA BREFO A19 527 626	\$ 500.00	John Hines 384 Hancock St. Apt. 2 Brooklyn, N. Y. 11216
NYC 21106	JOSEPHUS C. LILES A19 531 371	\$ 500.00	Thelma Blake 259 Jefferson Avenue Brooklyn, N. Y. 11216
NYC 21323	EVANGELOS VAKALOGLOU A16 027 078	\$1000.00	Nicholas Paul Altomerianos 1270 Avenue of the Americas New York, N. Y. 10019





ROUTE SLIP

Date

1/16/73

To ADM / BOND Room

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Approval                   | <input type="checkbox"/> Note & Return | <input type="checkbox"/> See me               |
| <input type="checkbox"/> Comment                    | <input type="checkbox"/> Note & File   | <input type="checkbox"/> As requested         |
| <input type="checkbox"/> Necessary action           | <input type="checkbox"/> Signature     | <input type="checkbox"/> For your information |
| <input type="checkbox"/> Per telephone conversation | <input type="checkbox"/> Call me Ext.  |   |

Remarks

DEPARTMENT OF JUSTICE  
NATURALIZATION SERVICE

NYC16690

File Number	A19 427 032 DB/JLL
Date	8/6/73
SUBJECT:	
IMMIGRATION BOND	
Form Number	I-352(2)
Date	2/22/71
Amount	\$1000.00
Alien's Name	
CAICEDO-Cabezas, Mario	

been fulfilled as to the above-named alien and you are no longer

SECURITY.

described immigration bond will be made available for return to  
rence for its delivery. Accordingly, would you please check the  
L NOT BE NECESSARY FOR YOU TO APPEAR AT THIS OFFICE  
LOW ADDRESS.

From \_\_\_\_\_ Room \_\_\_\_\_  
IMMIGRATION AND NATURALIZATION SERVICE GPO 946-075

- ☐ I prefer to receive my securities at the office shown below on a regular business day between the hours of 9 a.m. and 4 p.m. I understand that these securities will not be available in that office until after ten days from the date on which I mail this form. I understand also that it is necessary for me to surrender my "Receipt of Immigration Officer--United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond" (Form I-300 or Form I-305) before my securities may be released.
- ☐ It would be more convenient for me to receive my securities at the Immigration and Naturalization Service office located at:

(Street Address)

(City or Town, State)

(Zip Code)

☐ I prefer

PLEASE KEEP THIS LETTER BUT RETURN ALL YOUR BOND PAPERS IN THE ENCLOSED ENVELOPE SO WE CAN CASH YOUR CHECK. UPON RECEIPT OF THE BOND PAPERS YOU WILL RECEIVE A CHECK IN THE MAIL IN ABOUT THREE TO SEVEN WEEKS PLEASE INDICATE IF YOU WISH TO HAVE THE CHECK MAILED TO OUR OFFICE AT 20 WEST BROADWAY.

(Street Address)

(City or Town, State)

(Zip Code)

Signature of Obligor

Date

☒ CASH ACCEPTED AS SECURITY.

Arrangement will be made for the return to you of the cash accepted on the above-described immigration bond, upon delivery of your "Receipt of Immigration Officer--United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond" (Form I-300 or Form I-305) to the office shown below. Accordingly, please mail or bring the above-mentioned receipt to that office on a regular business day between the hours of 9 a.m. and 4 p.m. This notice will serve as your temporary receipt pending delivery of your security to you.

IMMIGRATION AND NATURALIZATION SERVICE  
20 West Broadway, New York, N.Y., 10007

ASSISTANT DISTRICT DIRECTOR FOR DEPORTATION

The City of New York



New York City Department of Social Services  
 Southern Region - Quality Control - Room 2773  
 World Trade Center, New York, N.Y. 10047

DEPARTMENT OF INCOME MAINTENANCE

Center

Address

SEP 11

90420

REQUEST FOR IMMIGRATION INFORMATION

United States Department of Justice  
 Immigration and Naturalization Service  
 20 West Broadway  
 New York, N.Y. 10007

A19 457 032  
 Alien Registration Number

Fold

provide us with the information requested below:

Used at Time of Arrival		Present Name (if changed)	
MARIO C. CAICEDO			
Toyeria la Granita, Pueblo Nueva, Buenaventura Valle, Colombia, S. A.			
Entry	Date of Entry	Name of Vessel or Airline	Port of Embarkation (foreign)
Kennville Florida	10/28/68	unknown	Colombia S. A.
Place of Birth	Age at Time of Arrival	Social Security No.	
Buenaventura a Colombia S. A.	27	116-46-6396	
Persons Accompanying			
Persons and Friends			
Information Requested According to our information, MARIO CAICEDO illegally entered on 10/28/68. On 6/12/72 a hearing was held by your department at which Mr. CAICEDO was given one year voluntary departure. We believe he left the U.S. on 5/28/73. Mr. CAICEDO is the husband of a public assistance recipient. Kindly verify if he has left the U.S. and his present address.			
Case/Caseworker	Group/Caselead No.	I.M./Unit Supervisor	Date
E. O'Toole		Florence Kozberg	4/5/74
Name	Category and	Case Number	
CAICEDO MARILYN	ABC	2234494-1	

REPLY FROM IMMIGRATION AND NATURALIZATION SERVICE

THE RECORDS OF THIS SERVICE REFLECT THAT MARIO CAICEDO - CABEZAS DEPARTED FROM THE U. S. TO COLOMBIA ON 8-6-73.

I.N.S. File No. A 19 457 032



## A. Name and address of obligor:

Gertrude Sylvester, 405 First Street, Brooklyn, New York 11215

If this bond is executed by a surety company complete the following: Rate of premium:

Amount of premium

The name and address of the person who executed a written instrument with the surety company requesting it to post the bond is:

## B. Name of alien for whom this bond is furnished: (If there is more than one alien, separate schedule showing name of each alien, date and country of his birth and arrival date, signed and sealed by the obligor and made part hereof, is attached.)

Name: Mario CAICEDO

Date and country of birth of alien: 11/10/44 Colombia

Date, port, and means of arrival in United States:

7/3/74 EL PASO EWI

Nationality of alien:

Colombia

## C. In consideration of the facts recited in paragraph or paragraphs herein numbered

-2-

and captioned BOND CONDITIONED FOR THE DELIVERY OF AN ALIEN

(and in any rider or riders lettered and captioned

attached hereto and made part hereof) the obligor above named, by subscribing hereto hereby declares that he is firmly bound unto the United States in the sum of ONE THOUSAND

dollars (\$1,000.00)

(except that in so-

far as the bond is that the alien shall not become a public charge the obligor declares himself bound in such amount or successive amounts as are prescribed in paragraph (3) herein) as liquidated damages and not as a penalty, which sum is to be paid to the United States immediately upon failure to comply with the terms set forth in any such paragraph or rider. The obligor further agrees that any notice to him in connection with this bond may be accomplished by mail directed to him at the above address. If bond is furnished for more than one alien, the obligor agrees that any references herein to alien in the singular sense shall be construed in the plural sense. The obligor acknowledges receipt of a copy of this executed bond and any attached rider or riders specified above. The burden of establishing compliance with the terms of the bond rests on the obligor. If this bond has been executed in consideration of the facts recited in paragraph (1) captioned "Bond for Maintenance of Status and Departure of Non-immigrant Alien" and has been furnished for more than one alien, the amount due for each alien who fails to comply with the terms thereof shall be

ONE THOUSAND

dollars (\$1,000.00)

), not to exceed the total sum of ONE

THOUSAND

dollars (\$1,000.00)

## D. Signed and sealed in the presence of

Date: April 22, 1975

Name

Address

Name

Address

(Witness)

(Witness)

(Obligor)

(SEAL)

## E. PLEDGE AND POWER OF ATTORNEY FOR USE WHEN UNITED STATES BONDS OR NOTES ARE DEPOSITED AS SECURITY

The United States Bonds/Notes described in the following schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with 6 U.S.C. 15, 31 CFR Part 225, and Treasury Department Circular 154 (Revised), dated October 31, 1969, and I the obligor named in this bond do hereby appoint the Attorney General of the United States as my attorney for me and in my name to collect or to sell, assign and transfer said United States bonds or notes and I agree that in case of any default in the performance of any of the conditions herein to which I have subscribed, my said attorney shall have the power to collect said bonds/notes or any part hereof or to sell, assign, and transfer said bonds/notes or any part thereof, without notice, at public or private sale, free from equity of redemption and without appraisal, valuation, notice and right to redeem being waived, and to apply the proceeds in whole or in part to the satisfaction of any damages, demands, or deficiencies arising by reason of such default, as my said attorney may deem best.

TITLE OF BONDS/NOTES	COUPONS ATTACHED	FACE VALUE	INTEREST RATE	SERIAL NO.	INTEREST DATES

## PLEDGE AND POWER OF ATTORNEY FOR USE WHEN CASH IS DEPOSITED AS SECURITY

The amount of ONE THOUSAND DOLLARS (\$1000.00), cash money of the United States, is hereby pledged as security for the performance and fulfillment of the foregoing undertaking, and I, the obligor named in this bond, hereby appoint the Attorney General of the United States as my attorney for me and in my name to collect or to assign and transfer the said sum of money, and I agree that, in the case of any default in the performance of any of the conditions herein to which I have subscribed, my said attorney shall have full power to collect said sum of money or any part thereof or to assign and transfer said sum or any part thereof, without notice and to apply said sum or any part thereof to the satisfaction of any damages, demands, or deficiencies arising by reason of such default, as my said attorney may deem best. I further empower my said attorney, in the event all the conditions herein to which I have subscribed have been complied with and the bond is canceled, to deliver the said sum of money plus any interest accrued thereon, to me at my risk and expense by such means as he shall select.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

22nd

day of

April

1975

Before me, within the county of

New York

in the State of

New York

(or the District of

Columbia), personally appeared the above named Gertrude Sylvester

and acknowledged the execu-

Witness my hand this

22nd

day of

April

19

75

Cash Clerk

(Title)

Bond approved and accepted

New York

New York

April 22

1975

(City)

(State)

Maurice F. Kiley

(District Director)

RECEIPT OF IMMIGRATION OFFICER -- UNITED STATES BONDS OR NOTES,  
OR CASH, ACCEPTED AS SECURITY ON IMMIGRATION BOND

1. Name <b>Gertrude Sylvester</b>	2. Receipt Number <b>NYC 33523</b>
B Number and Street <b>405 First Street</b>	3. City and State <b>New York, NY</b>
L City, State and ZIP Code <b>Brooklyn, NY 11215</b>	4. Date <b>April 22, 1975</b>
5. Name of alien <b>MARIO CAICEDO</b>	6. A-File <b>A19 457 032</b>
	7. Immigration bond: Date <b>4/22/75</b> Type <b>Del.</b>

8. UNITED STATES BONDS OR NOTES

(State form of assignment, if registered)

Said United States bonds/notes are assigned

Title of Bonds/Notes	Coupon or Registered	Total Face Amount	Denomination	Serial No.	Interest Dates
		<b>XXXX</b>			

(If this space is insufficient for enumeration of bonds/notes, use separate sheet and securely affix same hereto)

9. CASH (Postal Money Order, Certified Check)

The sum of **ONE THOUSAND** dollars (\$ **1,000.00** ).

10. NOTICE TO OBLIGOR

The Immigration and Naturalization Service will deposit accepted United States bonds or notes in a Federal depository for safekeeping; accepted cash will be deposited in the United States Treasury. When all of its conditions have been met, the immigration bond will be cancelled, you will be so notified, and you may then recover the accepted security. United States bonds or notes will be returned to you when you surrender this receipt and give your own receipt on Form I-306. If it is impossible for you to call in person for these securities, you may authorize their delivery to you at your risk and expense. Arrangement will be made for the return to you of the cash accepted as security when you surrender this receipt. YOU MUST SURRENDER THE ORIGINAL OF THIS RECEIPT BEFORE THE SECURITY WILL BE RETURNED TO YOU. This receipt is not assignable.

11. ACCEPTANCE OF SECURITY

The undersigned hereby acknowledges receipt from above-named obligor of the above-described security, deposited as security on above-named immigration bond filed with the undersigned on behalf of the above-named alien.

Signature of immigration officer <i>[Signature]</i>	Title of immigration officer <b>Cash Clerk</b>
--	---

To: A-File, attached to original of immigration bond form.



CERTIFICATE OF SERVICE

Oct 13, 1976

I certify that a copy of this brief and appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

Philip J. Amstrong